

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3290 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
GANPATRAI RAMJIBHAI BHATT

Versus

STATE OF GUJARAT

-----  
Appearance:

Ms. SANGITA PAHWA FOR MR PM THAKKAR for Petitioner  
SERVED for Respondent No. 1, 2

-----  
CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 02/11/96

ORAL JUDGEMENT

1. The pertinent and relevant facts which give rise to the present petition are as under:

1.1 The petitioner was appointed as Sanitary Inspector on 24th May 1971. While holding this post, it is averred that, he underwent training and was therefore qualified to function as a Food Inspector. The State

Government, therefore, in exercise of its powers under section 9(1)) of the Prevention of Food Adulteration Act, 1954 thought it fit to appoint him as a Food Inspector for the territorial limits of the second respondent Municipality. The Notification effecting this appointment is at Annexure-A to the petition. It is pertinent to note that the post of Food Inspector carries the same grade and scale as that of Sanitary Inspector. It is no ones' case that any additional allowance or monetary benefit accrues to the post of Food Inspector. However, in the year 1982, the petitioner was charged with offences punishable under section 161 of IPC read with section 5(1)(d) of the Prevention of Corruption Act, while he was serving as a Food Inspector at Dangadhra. On account of this fact it appears that he was suspended as Food Inspector and it also appears that his appointment as such was denotified i.e. a notification was issued cancelling and/or revoking the earlier notification effecting his appointment.

1.2 It is both relevant and pertinent to note at this stage that on account of his facing such criminal charges the only action taken by the State Government was to suspend him as Food Inspector (and not as a Sanitary Inspector) and to cancel his appointment as Food Inspector, without in any manner affecting his employment and/or posting as Sanitary Inspector.

1.3 It is also pertinent to note that although the petitioner was suspended as Food Inspector, the said order of suspension has not been placed on record, neither is that suspension under challenge in the present petition.

1.4 It is then averred by the petitioner that he faced the criminal trial and was acquitted by judgement and order of the appropriate court dated 24th September 1982. It is further averred that his appointment as Food Inspector was denotified by notification dated 14th September 1982. Although the said notification has not been produced with the petition, nor brought on record, learned counsel for the petitioner has at the time of hearing made the same available for scrutiny. From the said notification it appears that the petitioner was denotified as Food Inspector with effect from the date of notification viz. 14th September 1982.

1.5 It is also pertinent to note at this stage that the act of the first respondent-State in denotifying his appointment as Food Inspector and/or revoking the same has not been challenged in the present petition.

2. The only contention raised is that since he has been acquitted in the criminal case, the cause for revoking his appointment as Food Inspector no longer survives and that therefore the petitioner prays for a writ of mandamus and/or appropriate direction or order directing the respondent State to effect his appointment as Food Inspector by issuing an appropriate notification.

3. No matter how this prayer is worded or no matter how it is reframed in order to justify the same, I am afraid the same cannot be granted. It is pertinent to note that the appointment as a Food Inspector can be made by the State Government, and this can be done only in the exercise of powers which have been conferred upon the State Government by the relevant Statute viz. section (9), sub-section (1) of the Prevention of Food Adulteration Act. This power is not only executive in nature, but is also discretionary. In other words, a plain reading of the said statute indicates that an appointment may be made by the State Government in respect of a person who, in the opinion of the State Government, is a person fit for the post. Even assuming for the sake of argument that the cause and reason for removing him from the post no longer exists on and after the date of acquittal of the petitioner from the criminal charges, the best that could be said in his favour is that he would be eligible for consideration by the State in respect of the question as to whether he is a person suitable or fit to hold the post of Food Inspector. As already mentioned hereinabove his denotification and/or removal from the post of Food Inspector has not in any manner affected his substantive post of Sanitary Inspector. Throughout the criminal trial the petitioner has continued to work and earn his salary and allowances as a Sanitary Inspector, without even being suspended from this post. Thus, from these facts it becomes obvious that the State Government had formed an opinion at the relevant point of time that the petitioner was not fit and suitable to hold the post of Food Inspector under the circumstances then prevailing. It may be that on the petitioner being acquitted, it may be open to the State Government to once again form an opinion that his disqualification or disability no longer attaches to the petitioner and it may therefore consider the petitioner as to whether he is a fit and proper person to be once again appointed as a Food Inspector. However, as already stated hereinabove, this is a discretionary power to be exercised by the State Government and furthermore the power is of an executive nature. In view of this clear-cut situation it is not open to this court under

Article 226 of the Constitution of India to issue any mandate to the State Government to the effect that the latter should or must find the petitioner fit and suitable for appointment as Food Inspector. Even otherwise, this claim or prayer of the petitioner suffers from another disability viz. the petitioner had not acquired nor can he be said to have acquired any vested right, either under the statute or under any other service regulation, to hold the appointment of Food Inspector, since once upon a time he was found suitable and had been so appointed.

4. In the premises aforesaid, none of the prayers made in the present petition can be granted. This petition is, therefore, rejected. Rule is discharged with no order as to costs.

\*\*\*\*\*